

DISTRICT COURT RULES OF CIVIL PROCEDURE

**Adopted and Promulgated by
the Supreme Court
of the State of Hawai‘i**

**Effective January 1, 1972
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With Further Amendments as Noted**

**The Judiciary
State of Hawai‘i**

DISTRICT COURT RULES OF CIVIL PROCEDURE

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**DISTRICT COURT RULES OF
CIVIL PROCEDURE**

**ARTICLE I. SCOPE OF RULES -
ONE FORM OF ACTION**

Rule 1. SCOPE OF RULES.

These rules govern the procedure in the district courts of the State in all suits of a civil nature except as otherwise provided in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

COMMENTS:

Conformed to HRCF Rule 1 but excluding cases in Small Claims Court and cases outside the jurisdiction of the District Courts.

Rule 2. ONE FORM OF ACTION.

There shall be one form of action to be known as "civil action".

COMMENTS:

Not changed.

**ARTICLE II. COMMENCEMENT OF
ACTION; SERVICE OF PROCESS,
PLEADINGS, MOTIONS AND ORDERS**

Rule 3. COMMENCEMENT OF ACTION.

(a) **By filing of complaint.** A civil action is commenced by filing a complaint which shall include a civil information sheet with the court except that an appeal pursuant to Rule 72 and an action for relief from harassment maintained pursuant to HRS Section 604-10.5 are commenced by filing a petition.

COMMENTS:

Allows for additional requirement of civil information sheet and amends the rule to account for Rule 72 Administrative Appeals and HRS § 605-10.5 temporary restraining orders against harassment situations.

(b) **Venue.** The venue of an action is within the judicial circuit established by statute.

COMMENTS:

Not changed.

(c) **Place of filing.** Unless otherwise ordered by the administrative judge of a district court, the complaint shall be filed in the division of the judicial circuit below designated: (1) in the division where the defendant resides; (2) if the defendant does not reside in the judicial circuit, then in the division where the claim for relief arose, or if the claim for relief arose without the judicial circuit, then in any division where the defendant can be found; (3) if there are defendants residing in different divisions, then in the division where the claim for relief arose, or if the claim for relief arose without the judicial circuit, then in any division where any defendant can be found; (4) in an action for summary possession brought under chapter 666 of the Hawai'i Revised Statutes, in the division in which the premises or some part thereof are situated, without regard to the defendant's place of residence.

COMMENTS:

Not changed.

(d) **Transfer.** The court may transfer an action to any division within the judicial circuit, or outside the judicial circuit if so provided by statute, upon or without terms and conditions as the court deems proper.

COMMENTS:

Not changed.

(e) **Division defined.** For the purpose of this rule and wherever applicable, division is defined as set out in Schedule A of these rules.

COMMENTS:

Not changed.

Rule 4. PROCESS.

(a) **Summons: Issuance.** Upon the filing of the complaint the clerk shall forthwith issue a summons. Plaintiff shall deliver the complaint and summons to a person authorized to serve process. Upon request of

the plaintiff separate or additional summons shall issue against any defendant.

COMMENTS:

Changed to clarify that the clerk does not deliver the complaint and summons to the authorized server, but that the complaint and summons are returned to the Plaintiff who must deliver them to the server.

(b) Same: Form. The summons shall

(1) be signed by the clerk under the seal of the court,

(2) contain the name of the court, the names of the parties, and the date when issued,

(3) be directed to the defendant,

(4) state the name and address of the plaintiff's attorney, if any, otherwise the plaintiff's address,

(5) state the time within which these rules require the defendant to appear and defend, and shall notify the defendant that in case of defendant's failure to do so judgment by default will be rendered against the defendant for the relief demanded in the complaint,

(6) contain a prohibition against personal delivery of the summons between 10:00 p.m. and 6:00 a.m. on premises not open to the public, unless a judge of the district or circuit courts permits, in writing on the summons, personal delivery during those hours, and

(7) contain a warning to the person summoned that failure to obey the summons may result in an entry of default and default judgment.

COMMENTS:

Amended by Supreme Court's Order Amending Rules of Court filed May 12, 1995.

(c) Same: By whom served. Service of all process shall be made anywhere in the State by the sheriff or the sheriff's deputy or by the chief of police or the chief's duly authorized subordinate or by some other person specially appointed by the court for that purpose, or by any person who is not a party and is not less than 18 years of age. A subpoena, however, may be served as provided in Rule 45.

COMMENTS:

Changed to allow service outside the judicial circuit. Unlike HRS § 634-23, HRS §§ 634-33, 34, 35, and 36 appear to apply to any action in the State and are therefore applicable to actions in the District Courts. Further, there was an inconsistency in the original DCRCP between DCRCP Rule 3(c)(2), (3) and (4) which contemplated inclusion of defendants who resided outside the judicial circuit and DCRCP Rule 4 which limited service of process to the judicial circuit.

Changed to gender neutral language.

(d) Same: Personal service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

(1) Upon an individual other than an infant or an incompetent person, (i) by delivering a copy of the summons and of the complaint to that individual personally or in case the individual cannot be found by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or (ii) by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant, by delivering a copy of the summons and of the complaint personally (i) to the guardian of the infant's property or if there is no guardian of the infant's property or service cannot be made upon such guardian then as provided by order of the court, and (ii) if the infant be of the age of 16 years or over, also to the infant; and upon an incompetent person, by delivering a copy of the summons and of the complaint personally (i) to the guardian of the incompetent person's property, or if the incompetent person is living in an institution then to the director or chief executive officer of the institution, or if service cannot be made upon either of them, then as provided by order of the court, and (ii) unless the court otherwise orders, also to the incompetent person.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of

the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the State by delivering a copy of the summons and of the complaint to the attorney general of the State or to the assistant attorney general or to any deputy attorney general who has been appointed by the attorney general.

(5) Upon an officer or agency of the State by delivering a copy of the summons and of the complaint to the attorney general of the State, or to the assistant attorney general or to any deputy attorney general who has been appointed by the attorney general, and also by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation, its copies shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(6) Upon a county, by delivering a copy of the summons and of the complaint to the corporation counsel or county attorney or to any deputy corporation counsel or county attorney for such county.

(7) Upon an officer or agency of a county, by serving the county and by delivering a copy of the summons and of the complaint to such officer or agency. If the agency is a corporation the copies shall be delivered as provided in paragraph (3) of this subdivision of this rule.

(8) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by any statute.

COMMENTS:

Adopts HRCPP Rule 4 with changes to gender neutral language. HRCPP Rule 4 differs from DCRCP Rule 4 at subdivision (d)(4). This committee has adopted HRCPP Rule 4(d)(4) because HRS § 661-1 appears to contemplate actions against the State of Hawai'i in District Court.

(e) Same: Other service. Whenever a statute provides for service upon a party not an inhabitant of or found within the State, of a summons, or of a

notice, or of an order in lieu of summons, service shall be made under the circumstances and in the manner prescribed by the statute or order. Whenever a statute or an order of court requires or permits service by publication of a summons, or of a notice or of an order in lieu of summons, any publication pursuant thereto shall be made under the circumstances and in the manner prescribed by the statute or order.

COMMENTS:

Adopts HRCPP Rule 4(e). The original DCRCP Rule 4(e) did not allow service by publication. Unlike HRS § 634-23, HRS §§ 634-33, 34, 35, and 36 appear to apply to any action in the State and are therefore applicable to actions in the District Courts.

(f) Territorial limits of service. All process may be served anywhere within or outside of the State in conformance with HRS Section 604-7(c).

COMMENTS:

Changed pursuant to HRS Section 604-7 which allows for service anywhere in the state and has provisions for service outside the state.

(g) Return. The person serving the process shall make proof of service thereof to the court promptly and in any event within the time during which the person served must respond to process. When service is made by any person specially appointed by the court, or by an authorized process server, that person shall make affidavit of such service.

COMMENTS:

*Changed to gender neutral language.
Changed to take into account HRS Chapter 634D.*

(h) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

COMMENTS:

Not changed.

Rule 5. SERVICE AND FILINGS OF PLEADINGS AND OTHER PAPERS.

(a) Service: When required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, brief or memorandum of law, offer of judgment, bill of costs, designation of record on appeal, and similar paper shall be served upon each of the parties, but no service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

COMMENTS:

Not changed.

(b) Same: How made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney except as provided in subdivision (d) unless service upon the party itself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to such attorney or party or by mailing it to the attorney or party at the attorney's or party's last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's office with the attorney's clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at that person's

dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Service by facsimile, if the court has entered an order allowing facsimile service in the case, is complete upon confirmation of transmission.

COMMENTS:

Changed to gender neutral language. The addition of service by facsimile anticipates increased future use and acceptance.

(c) Same: Numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

COMMENTS:

Adopts HRCF Rule 5(c). DCRCP Rule 5(c) was reserved. District Court civil cases have become far more complex. This is especially true of commercial lease summary possession cases. Recent Supreme Court rulings have indicated that such summary possession cases are within the exclusive jurisdiction of the District Courts. Since summary possession cases are expedited proceedings, the adoption of HRCF Rule 5(c) is appropriate.

(d) Filing. Except as provided in subdivision (f) of this rule, all papers after the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.

COMMENTS:

Not changed.

(e) Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Any other rule to the contrary notwithstanding, the clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules. Proposed findings, conclusions, orders, or judgments submitted for signature shall be dated and stamped "lodged" or "received" by the clerk and transmitted to the court for consideration.

COMMENTS:

Changed to gender neutral language.

(f) Nonfiling of discovery materials. A deposition, interrogatory, request for discovery production or inspection, request for documents, request for admissions, and answers and responses thereto shall not be filed automatically with the court; provided that on a motion or at trial any such document shall be filed when offered in evidence or submitted as an exhibit; and further provided that a deposition taken outside this state or a deposition taken by an officer who is discontinuing the occupation of taking depositions shall be promptly filed pursuant to Rule 30(f)(1). In addition the court may at any time, on ex parte request or sua sponte, order the filing of any discovery material.

COMMENTS:

Not changed.

(Amended June 23, 1997 and July 2, 1997, effective August 1, 1997.)

Rule 6. TIME.

(a) Computation. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or a legal holiday.

When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. As used in this rule, "holiday" includes any day designated as such pursuant to section 8-1 of the Hawai'i Revised Statutes.

COMMENTS:

Adopts HRCF Rule 6(a) which adds the last sentence.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 52(b), 59(b), (d) and (e) and 60(b) of these rules and Rule 4(a) of the Hawai'i Rules of Appellate Procedure, except to the extent and under the conditions stated in them.

COMMENTS:

Not changed.

(c) Reserved.

(d) For motions; affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than 14 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), pleadings, memoranda and affidavits may be served not later than 72 hours preceding the hearing, unless the court permits them to be served at some other time.

COMMENTS:

The rule lengthens the current 48 hour notice requirement and does not adopt the 5 day notice requirement set by HRCF Rule 6(d). The rule also adds on other relevant writings and clarifies the deadline for service.

(e) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon that party and the notice or paper is served upon that party by mail, two days shall be added to the prescribed period.

(Amended June 8, 2001, effective July 1, 2001.)

COMMENTS:

Changed to gender neutral language.

ARTICLE III. PLEADINGS AND MOTIONS

Rule 7. PLEADINGS ALLOWED; FORM OF MOTIONS.

(a) Pleadings. There shall be a complaint and an answer; there may be a counterclaim or cross-claim denominated as such; there may be a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and there shall be a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except by leave or order of court or as provided by statute or rule of court.

COMMENTS:

No changes made to ensure the informality implicit in the District Court and to lessen the burden of deadlines and filings on the layman.

(b) Motions and other papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

COMMENTS:

Not changed.

(c) Demurrers, pleas, etc., abolished.

Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

COMMENTS:

Not changed.

Rule 8. GENERAL RULES OF PLEADING.

(a) Claims for relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief to which the pleader deems the pleader entitled. Relief in the alternative or of several different types may be demanded.

COMMENTS:

Changed to gender neutral language.

(b) Defenses; form of denials. Except in summary possession proceedings or where a defendant has been served by the publication of summons in a newspaper of general circulation, (1) a defendant may defend by filing an answer on the return day or within the time ordered by the court;

(2) an appearance without written answer shall be deemed to constitute a general denial of the truth of the facts stated in the complaint; (3) whether or not the defendant has filed an answer, the court may order a written answer, governed by the following rules: (i) the pleader shall admit or deny the averments upon which the adverse party relies; (ii) if the pleader is without knowledge or information sufficient to form a belief as to the truth of an averment, the pleader shall so state and this has the effect of a denial; (iii) denials shall fairly meet the substance of the averments denied; (iv) when a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder; (v) unless the pleader intends in good faith to controvert all the averments of the pleading which the pleader has been ordered to answer, the pleader may make the pleader's denials as specific denials of designated averments or paragraphs, or the pleader may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

In summary possession proceedings or where a defendant has been served by the publication of summons in a newspaper of general circulation, a defendant may defend by filing an answer on the return day specified by Rule 12(a) or by making an appearance without written answer on the return day specified by Rule 12(a) which shall be deemed to constitute a general denial of the truth of the facts stated in the complaint.

COMMENTS:

The amended Rule 8(b) allows oral general denial in Summary Possession proceedings. The summary nature of such proceedings contemplates shorter time periods. The shorter return date of the old Rule 12(a) will be preserved in this revision. Given such a short return period, these rules must take into account the inability of the lay defendant in a Residential Landlord-Tenant matter to generate any kind of a written answer within five days of service. This committee has therefore

retained the use of oral general denials in Summary Possession proceedings. Contemplates the adoption of HRCF Rule 11 as DCRCP Rule 11.

Changed to gender neutral language.

(c) Affirmative defenses. A general denial by the defendant of the claim made against that defendant shall be deemed to render available to the defendant any other matter constituting an avoidance or affirmative defense, unless a written answer has been ordered under Rule 8(b)(3). An answer so ordered shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court, if justice so requires, shall treat the pleading as if there had been a proper designation.

COMMENTS:

No change except gender neutral language.

(d) Effect of failure to deny. Averments in a complaint or third-party complaint, other than those as to the amount of damage, are admitted when not denied in the answer or at the appearance on the return day:

(1) in a summary possession proceeding; or

(2) where a defendant has been served by the publication of summons.

Averments in any other pleading shall be taken as denied or avoided unless a responsive pleading is permitted or ordered or provided for by statute or court rule, in which case averments (except those as to the amount of damage) are admitted when not denied.

COMMENTS:

No change except to account for summary possession cases and those with publication summons.

(e) Pleading to be concise and direct; consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

(2) A party may set forth two or more statements of a claim or defense alternatively, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency. All statements shall be made subject to the obligations set forth in Rule 11.

COMMENTS:

Adopts HRCF Rule 8(e), but deletes the word "hypothetical" because it seems to oppose notions of a "good faith" pleading. Also, words referring to equity jurisdiction were deleted due to their specialized correspondence to District Court.

(f) Construction of pleadings. All pleadings shall be construed so as to do substantial justice.

COMMENTS:

Not changed.

Rule 9. PLEADING SPECIAL MATTERS.

(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or to be sued or the authority of a party to sue or to be sued in a representative capacity, the pleader shall include such supporting particulars as are peculiarly within the pleader's knowledge.

(b) Reserved.

(c) Reserved.

(d) Reserved.

(e) Reserved.

(f) Reserved.

(g) Special damage. When items of special damage are claimed, they shall be specifically stated.

COMMENTS:

In order to ensure the simplicity of the District Court, the committee decided not to adopt all of the pleading of special matters of HRCF Rule 9.

Rule 10. FORM OF PLEADINGS.

(a) Caption; names of parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, the nature of the suit, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

COMMENTS:

Changed to account for the nature of the suit to assist the clerks in sorting documents.

(b) Paragraphs; separate statements. All averments of claim, or if a more specific answer is filed, the defenses shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

COMMENTS:

Changed to allow for written answers.

(c) Adoption by reference; exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

COMMENTS:

Not changed.

Rule 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; SANCTIONS.

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in that attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signatory that the signatory has read the pleading, motion, or other paper; that to the best of the signatory's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

COMMENTS:

Adopts HRCF Rule 11 verbatim except changed to gender neutral language.

Currently, DCRCP provide the District Courts with little power to sanction attorneys who are negligent or worse in the filing of documents and no power to sanction pro se parties who are negligent or worse in the filing of documents. Adoption of Rule 11 will give the District Courts more flexibility in dealing with errant activity by litigants.

Rule 12. DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON THE PLEADINGS.**(a) Answers - When presented; return day.**

All defendants shall appear or answer at the time appointed in the summons, on the second Monday following the date of service, except where the district judge sets some other secular day; and should such Monday be a legal holiday then upon the next secular day.

In summary possession proceedings under chapter 666 of the Hawai'i Revised Statutes, all defendants shall appear on or answer by a return day which shall be the next court session no less than five days following the date of service if made in the circuit in which the action was commenced, and shall be the next court session not less than seven days following the date of service if made in another circuit; provided, that if a defendant cannot be found in the State, the return day shall be the next court session not less than ten days following the required posting on the premises and delivery or mailing of the complaint and summons as ordered by the court.

COMMENTS:

The time periods in Rule 12(a) for summary possession proceedings differ from those set under the old rule in consideration of the passage by the 1991 Judicial Conference of Resolution No. 91-3 and is intended to correct the problem in the Rural Courts of Oahu and the Neighbor Island Courts which did not convene more than once a week and therefore could not comply with the time requirements of the old Rule 12(a).

(b) How presented. Every defense, in law or fact, to the complaint or third-party complaint, may be asserted in the responsive pleading thereto, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A

motion making any of these defenses may be made before trial. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, that adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense number (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

COMMENTS:

Adopts similar language of HRCP Rule 12(b) with changes to gender neutral language.

(c) Motion for judgment on the pleadings.

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

COMMENTS:

Not changed.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

COMMENTS:

Not changed except title - adopts HRCP Rule 12(d) title.

(e) Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, that party may move for a more definite statement before interposing its responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just. The order of the court granting or denying the motion shall fix the time within which the responsive pleading shall be filed and served.

COMMENTS:

Changed to gender neutral language.

(f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the moving party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

COMMENTS:

Adopts HRCP Rule 12(f) verbatim except with changes to gender neutral language.

(g) Reserved.

COMMENTS:

Not changed.

(h) Waiver or preservation of certain defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived if it is not made by motion under this rule or included in a

responsive pleading or an amendment thereof permitted by Rule 15.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(Amended effective December 6, 1996.)

COMMENTS:

Adopts HRCF Rule 12(h) verbatim.

Rule 12.1. DEFENSE OF TITLE IN DISTRICT COURTS.

Pleadings. Whenever, in the district court, in defense of an action in the nature of an action of trespass or for the summary possession of land, or any other action, the defendant shall seek to interpose a defense to the jurisdiction to the effect that the action is a real action, or one in which the title to real estate is involved, such defense shall be asserted by a written answer or written motion, which shall not be received by the court unless accompanied by an affidavit of the defendant, setting forth the source, nature and extent of the title claimed by defendant to the land in question, and such further particulars as shall fully apprise the court of the nature of defendant's claim.

COMMENTS:

Not changed.

Rule 13. COUNTERCLAIM AND CROSS-CLAIM.

(a) Reserved.

COMMENTS:

Not changed.

(b) Counterclaims. A pleading shall state as a counterclaim any claim against an opposing party but the relief shall not exceed the jurisdictional limitations of the court.

COMMENTS:

Changed to delete confusing language and to clarify that the limitation is the jurisdictional limit as stated by law.

(c) Counterclaim exceeding opposing claim.

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

COMMENTS:

Adopts HRCF Rule 13(c) verbatim. Changes from DCRCP Rule 13(c) are in form only.

(d) Counterclaim against the state. These rules shall not be construed to enlarge beyond the limits now fixed by law the right to assert counterclaims or to claim credits against the State or a county, or an officer or agency of the State or a county.

COMMENTS:

Not changed.

(e) Counterclaim maturing or acquired after pleading. A claim which either matured or was acquired by the pleader after serving its pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

COMMENTS:

Not changed except to gender neutral language.

(f) Omitted counterclaim. When a pleader fails to file a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court file the counterclaim.

COMMENTS:

Changed to gender neutral language.

(g) Cross-claim against co-party. A pleading may state as a crossclaim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.

COMMENTS:

Not changed.

(h) Joinder of Additional parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.

COMMENTS:

Adopts HRCP Rule 13(h) verbatim.

(i) Separate trials; separate judgment. If the court orders separate trials as provided in Rule 42(b), judgment on counterclaim or crossclaim may be rendered in accordance with the terms of Rule 54(b), even if the claims of the opposing party have been dismissed or otherwise disposed of.

COMMENTS:

Not changed.

Rule 14. THIRD-PARTY PRACTICE.

(a) When defendant may bring in third-party. At any time after commencement of the action a defending party, as third party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to

such third party plaintiff or to the plaintiff for all or part of the plaintiff's claim against the third party plaintiff. The third party plaintiff need not obtain leave to make the service if the third party plaintiff files the third-party complaint not later than 10 days after the third party plaintiff serves its original answer. Otherwise, the third party plaintiff must obtain leave on motion upon notice to all parties to the action. The person so served, hereinafter called the third-party defendant, shall make the third-party defendant's defenses to the third-party plaintiff's claim as provided in Rule 12 and the third-party defendant's counterclaims against the third-party plaintiff and cross-claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert the third-party defendant's defenses as provided in Rule 12 and the third-party defendant's counterclaims and cross-claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

COMMENTS:

Adopts HRCP Rule 14(a) with changes to gender neutral language.

(b) When plaintiff may bring in third-party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third-party to be brought in under circumstances which under this rule would entitle a defendant to do so.

COMMENTS:

Adopts HRCP Rule 14(b) verbatim but changed to gender neutral language.

(c) Form of pleading. Third-party plaintiff shall conform its third-party complaint and other documents to Rule 3 of the Rules of District Court of the State of Hawai'i.

COMMENTS:

Subsection (c) was added to give a guideline for the forms of third-party complaints.

Rule 15. AMENDED AND SUPPLEMENTAL PLEADINGS.

(a) Amendments. A party may amend its pleading once as a matter of course at any time before a responsive pleading is served or oral answer made. If the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend its pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be longer, unless the court otherwise orders.

COMMENTS:

Adopts HRCPP Rule 15(a) with language changes to take into account District Court oral answers in summary possession cases and to gender neutral language.

(b) Amendments to conform to the evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be

subverted thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice that party in maintaining that party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

COMMENTS:

Changed to gender neutral language.

(c) Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against that party, the party to be brought in by amendment (1) has received such notice of the institution of the action that that party will not be prejudiced in maintaining that party's defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against that party.

(Amended effective December 6, 1996.)

COMMENTS:

Changed to gender neutral language.

(d) Supplemental pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the moving party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

COMMENTS:

Changed to gender neutral language.

Rule 16. PRE-TRIAL PROCEDURE.

In any action, the court may in its discretion direct the attorneys for the parties or the parties if appearing pro se to appear before it for a conference to consider:

- (1) the simplification of the issues;
- (2) the necessity or desirability of amendments to the pleadings;
- (3) the possibility of obtaining admissions (whether admissions of fact or of documents) which will avoid unnecessary proof;
- (4) the limitation of the number of expert witnesses;
- (5) RESERVED.
- (6) such other matters as may aid in the disposition of the action.
- (7) the regulation of discovery pursuant to Part V herein.

The court may make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel or of parties; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court, in its discretion, may establish a pre-trial calendar on which action may be placed for consideration as above provided. The court may direct the attorneys and parties to appear at as many conferences as the court may deem appropriate to accomplish the objectives of this rule.

COMMENTS:

HRCP Rule 16 and DCRCP Rule 16 have similar language. This version takes into account the larger number of parties appearing pro se in District Court and the absence of jury trials in District Court.

This version of the rule incorporates the intent of HRCP Rule 26(f) into the pre-trial conference calendar. This will allow the court more flexibility in tailoring the pre-trial procedures and time periods to the complexity of the case.

(Amended effective December 6, 1996.)

ARTICLE IV. PARTIES**Rule 17. PARTIES PLAINTIFF AND DEFENDANT; CAPACITY.**

(a) Real party in interest. Every action shall be prosecuted in the name of the real party in interest; except that (1) an executor, administrator, personal representative, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in such party's own name without joining with such party the party for whose benefit the action is brought, and (2) this requirement shall not be mandatory where a subrogee is a real party in interest. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

COMMENTS:

Adopts HRCP Rule 17(a) with changes to gender neutral language. Although substantially the same, the HRCP Rule 17(a) is adopted for consistency.

(b) Reserved.**COMMENTS:**

Not changed.

(c) Infants or incompetent persons. Whenever an infant or incompetent person has a guardian, whether appointed as to the infant or incompetent person's person or property, such guardian appointed as to the infant or incompetent person's property, or if no guardian has been appointed as to the infant or incompetent person's property, then such guardian appointed as to the infant or incompetent person's person, may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed guardian the infant or incompetent person may sue by the infant or incompetent person's next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for

an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

COMMENTS:

Adopts DCRCP Rule 17(c) (HRCF Rule 17(c) is identical) with changes to gender neutral language.

(d) Unidentified defendant.

(1) When it shall be necessary or proper to make a person a party defendant and the party desiring the inclusion of the person as a party defendant has been unable to ascertain the entire name of the defendant or a part of the defendant's name to ascertain the defendant's identity, the party desiring the inclusion of the person as a party defendant shall in accordance with the criteria of Rule 11 of these rules set forth in a pleading with the person's interest in the action, so much of the person's name as is known (and if unknown, a fictitious name shall be used), and shall set forth with specificity all actions already undertaken in a diligent and good-faith effort to ascertain the person's full name and identity.

(2) Subject to HRS section 657-22, the person intended shall thereupon be considered a party defendant to the action, as having notice of the institution of the action against that party, and as sufficiently described for all purposes, including services of process, and the action shall proceed against that party.

(3) Any party, may, by motion for certification, make the name or identity of the party defendant known to the court within a reasonable time after the moving party knew or should have known the name or identity of the party defendant. The motion shall be supported by affidavit setting forth all facts substantiating the movant's claim that the naming or identification has been made with due diligence. When the naming or identification is made by a plaintiff, it shall be made prior to any pre-trial conference or within such additional time as the court may allow. The court shall freely grant reasonable extensions of the time in which to name or identify the party defendant to any party exercising due diligence in attempting to ascertain the party defendant's name or identity.

(4) When a party defendant has been named or

identified in accordance with this rule, the court shall so certify and may make any order that justice requires to protect any party from undue burden and expense in any further proceedings involving the party defendant.

(5) A party defendant who has been named or identified in accordance with this rule may have dismissal of one or more claims against that party defendant if that party defendant shows in a timely manner that the delay in naming or identifying the party defendant has caused the party defendant substantial prejudice and if the interests of justice so require.

COMMENTS:

Adopts HRCF Rule 17 with amendments to gender neutral language.

The increasing complexity of District Court Civil litigation justifies the adoption of such HRCF rules as this.

Rule 18. JOINDER OF CLAIMS.

(a) Joinder of claims. A party asserting a claim for relief as an original claim, counterclaim, cross-claim, or third-party claim may join, either as independent or as alternate claims as many claims as the party may have against an opposing party, provided that the aggregate of such other claims must be within the jurisdictional limitations of the District Court. *(Amended effective December 6, 1996.)*

COMMENTS:

Adopts HRCF Rule 18(a) with the addition of the last phrase to take into account the jurisdictional limitations on amount and subject matter of the District Court.

(b) Reserved.

COMMENTS:

Not changed.
HRCF Rule 18(b) was not adopted here because it appears to deal mainly with fraudulent conveyances, a matter outside the jurisdiction of the District Court.

Rule 19. JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION.

(a) Persons to be joined if feasible. A person who is subject to service of process shall be joined as a party in the action if (1) in such party's absence complete relief cannot be accorded among those already parties, or (2) such party claims an interest relating to the subject of the action and is so situated that the disposition of the action in such party's absence may (A) as a practical matter impair or impede such party's ability to protect that interest or (B) leave any of the persons already parties subject to substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of such party's claimed interest. If such a party has not been so joined, the court shall order that such person be made a party. If such party should join as a plaintiff but refuses to do so, such party may be made a defendant, or, in a proper case, an involuntary plaintiff.

COMMENTS:

Adopts HRCR Rule 19(a) with changes to gender neutral language.

(b) Determination by court whenever joinder not feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the absent person or those already parties; second, the extent to which, by protective measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

COMMENTS:

Adopts HRCR Rule 19(b) with changes to gender neutral language.

(c) Pleading reasons for nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as

described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

COMMENTS:

Adopts HRCR Rule 19(c) with changes to gender neutral language.

Rule 20. PERMISSIVE JOINDER OF PARTIES.

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

COMMENTS:

Adopts HRCR Rule 20(a) verbatim.

(b) Separate trials. The court may make such order as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

COMMENTS:

Adopts Rule 20(b) with changes to gender neutral language.

Rule 21. MISJOINDER AND NON-JOINDER OF PARTIES.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately by order of the court.

COMMENTS:

Not changed.

Rule 22. INTERPLEADER.

Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

COMMENTS:

Adopts HRCPP Rule 22 with changes to gender neutral language.

Rule 23. RESERVED.**Rule 24. INTERVENTION.**

(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

COMMENTS:

Changed to gender neutral language.

(b) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute, ordinance or executive order administered by an officer, agency or governmental organization of the State or a county, or upon any regulation, order, requirement or agreement issued or made pursuant to the statute, ordinance or executive order, the officer, agency or governmental organization upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

COMMENTS:

Not changed.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

COMMENTS:

Not changed.

Rule 25. SUBSTITUTION OF PARTIES.**(a) Death.**

(1) If a party dies and the claim is not thereby extinguished, the court shall on motion order substitution of the proper parties. If substitution is not so made, the action shall be dismissed as to the deceased party. The motion for substitution may be made by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the

motion for substitution is made not later than 180 days after the death is suggested upon the record by service of a statement of the fact of death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

COMMENTS:

Adopts HRCP Rule 25(a)(1). The addition of the last sentence of HRCP Rule 25(a)(1), which is not presently in DCRCP Rule 20(a)(1) is favored by this committee as a measure to reduce the number of old pending cases which the District Courts must carry on their calendars.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against the surviving parties.

COMMENTS:

Not changed.

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in subdivision (a) of this rule shall allow the action to be continued by or against the incompetent party's representative, guardian or guardian ad litem.

COMMENTS:

Adopts HRCP Rule 25(b) with changes to gender neutral language.

(c) Transfer of interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subdivision (a) of this rule.

COMMENTS:

Not changed.

(d) Public officers; death or separation from office.

(1) When a public officer is a party to an action in the officer's official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order or substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

COMMENTS:

Adopts HRCP Rule 25(d) with changes to gender neutral language.

(2) When a public officer sues or is sued in the officer's official capacity, the officer may be described as a party by the officer's official title rather than by name; but the court may require the officer's name to be added.

COMMENTS:

Adopts HRCP Rule 25(d) with changes to gender neutral language.

**ARTICLE V. DEPOSITIONS AND
DISCOVERY****Rule 26. GENERAL PROVISIONS
GOVERNING DISCOVERY.**

(a) Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written questions; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examination; and requests for admission.

(b) Discovery scope and limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) **IN GENERAL.** Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Subject to the specific limitations on interrogatories contained in these rules, the frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

(2) **INSURANCE AGREEMENT.** A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) **TRIAL PREPARATION: MATERIALS.** Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including that other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of this case and that the party seeking discovery is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) **TRIAL PREPARATION: EXPERTS.** Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows:

(A) (i) A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (ii) Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to subdivision (b)(4)(C) of this rule, concerning fees and expenses as the court may deem appropriate.

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparations for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery under subdivisions (b)(4)(A)(ii) and (b)(4)(B) of this rule; and (ii) with respect to discovery obtained under subdivision (b)(4)(A)(ii) of this rule the court may require, and with respect to discovery obtained under subdivision (b)(4)(B) of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(c) Discovery scope and limits. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2)

that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except person designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of responses. A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement that party's response to include information thereafter required, except as follows:

(1) A party is under a duty seasonably to supplement that party's response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, the subject matter on which that person is expected to testify, and the substance of that person's testimony.

(2) A party is under a duty seasonably to amend a prior response if that party obtains information upon the basis of which (A) that party knows that the response was incorrect when made, or (B) that party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

(f) Status conference. Any discovery to be conducted in a contested case may be discussed at the conference authorized by Rule 16. Each party and attorney is under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the court or by the attorney for any party.

Following the conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires.

(g) Signing of discovery request, responses, and objections. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in that attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state that party's address. The signature of the attorney or party constitutes a certification that signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule,

the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

(Amended effective December 6, 1996.)

COMMENTS:

Adopts HRCP Rule 26 with modifications. These revisions have been drafted with the philosophy of conformity of civil procedures between the District and Circuit Courts. This philosophy mandates the adoption of the Circuit Court discovery procedures in District Court Civil practice. This committee has found that the greatest area of confusion exhibited by attorneys who do not appear often in District Court is in discovery matters. Adoption of the Circuit Court discovery procedures would end that confusion. HRCP Rule 26(f) provides for a discovery conference. The last sentence of HRCP Rule 26(f) gives the court discretion to combine the discovery conference with the Rule 16 pre-trial conference. This committee felt it advisable to merely provide that the Rule 16 pre-trial conference would also be the discovery conference. See the comments under Rule 16 for more explanation of this change.

Changed to gender neutral language.

Rule 27. DEPOSITIONS BEFORE ACTION OR PENDING APPEAL.

(a) Before action.

- (1) RESERVED.
- (2) RESERVED.
- (3) RESERVED.

(4) USE OF DEPOSITION TO PERPETUATE TESTIMONY TAKEN IN ANY OTHER COURT. If a deposition to perpetuate testimony is taken and it would be admissible in evidence in the court of the United States or of the state, territory or insular possession of the United States in which it is taken, it may be used in any action involving the same subject matter subsequently brought, in accordance

with the provisions of Rule 32(a).

(b) Pending appeal. If an appeal has been taken from a judgment of a district court or before the taking of an appeal if the time therefor has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in the event of further proceedings in the court. In such case the party who desires to perpetuate the testimony may make a motion in the court for leave to take the depositions, upon the same notice and service thereof as if the action was pending in the court. The motion shall show (1) the names and addresses of the persons to be examined and the substance of the testimony which that party expects to elicit from each, and (2) the reasons for perpetuating their testimony. If the court finds that the perpetuation of the testimony is proper to avoid a failure or delay of justice, it may make an order allowing the depositions to be taken and may make orders of the character provided for by Rules 34 and 35, and thereupon the depositions may be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

(c) Reserved.

(Amended effective December 6, 1996.)

COMMENTS:

Not changed. HRCF Rule 27 was not adopted here because this committee felt that a party wishing to perpetuate testimony should do so in the Circuit Court under HRCF Rule 27 which has a wider jurisdictional reach than the District Court.

Rule 28. PERSONS BEFORE WHOM DEPOSITIONS MAY BE TAKEN.

(a) Within the United States. Within a state of the United States or the District of Columbia or within a territory or insular possession of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of this State or of the United States or of the place where the examination is held, or before a person appointed by the court in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(b) In foreign countries. In a foreign country, depositions may be taken (1) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States, or (2) before a person commissioned by the court, and a person so commissioned shall have the power by virtue of that commission to administer any necessary oath and take testimony, or (3) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To the Appropriate Authority in (here name the country)". Evidence obtained in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions taken within the United States under these rules.

(c) Disqualification for interest. No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the action.

COMMENTS:

Adopts HRCF Rule 28 with changes to gender neutral language. The only change from DCRCP Rule 28 is the addition of the last sentence to subdivision (a).

Rule 29. STIPULATIONS REGARDING DISCOVERY PROCEDURE.

Unless the court orders otherwise, the parties may, on the record by a writing, stipulate to (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions, and (2) modify the procedures provided by these rules for other methods of discovery, except that stipulations extending the time provided in Rules 33, 34, and 36 for responses to discovery may be made only with the approval of the court.

COMMENTS:

Adopts HRCF Rule 29 with the exception of one additional note: now a stipulation may be made on the record at the disposition.

Rule 30. DEPOSITIONS UPON ORAL EXAMINATION.

(a) When deposition may be taken. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination for the purpose of discovery or for use as evidence in the action or for both purposes, when: (1) the party obtains leave of court for the taking of the deposition upon showing to the satisfaction of the court the need therefor; or (2) the parties so stipulate under Rule 29. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes. Leave of court may be granted upon oral motion which may be received at the pretrial conference or at a hearing of the same.

(b) Notice of examination: General requirement; special notice; non-stenographic recording; production of documents and things; deposition of organization; deposition by telephone.

(1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each

person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person to be examined or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) Leave of court is not required for the taking of a deposition by a party if the notice (A) states that the person to be examined is about to go out of the State or is about to go out of the United States, or is bound on a voyage to sea, or is impending death, and will be unavailable at the time of trial, and (B) sets forth facts to support the statement. The party or the party's attorney shall sign the notice, and that signature shall constitute a certification by the party or party's attorney in accordance with Rule 11. The sanctions provided by Rule 11 are applicable to the certification.

If a party shows that when the party was served with notice under this subdivision (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition, or the party establishes a Rule 11 violation, the deposition may not be used against that party.

(3) The court may for cause shown enlarge or shorten the time for taking the deposition.

(4) Subject to the provisions of Rule 2 of the Rules Governing Court Reporting, the parties may stipulate in writing or the court may upon motion order that the testimony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving, and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at the party's own expense. Any objections under subdivision (c), any changes made by the witness, the witness' signature identifying the deposition as the witness' own or the statement of the officer that is required if the witness does not sign, as provided in subdivision (e), and the certification of the officer required by subdivision (f) shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in the party's notice and in a subpoena name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth for each person designated, the matters on which the person will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subdivision (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing, or on the record, or the court may, upon motion, order that a deposition be taken by telephone. For the purposes of this rule and Rules 28(a), 37(a)(1), 37(b)(1) and 45(d), a deposition taken by telephone is taken in the circuit and at the place where the deponent is to answer questions propounded to the deponent.

(c) Examination and cross-examination; record of examination; oath; objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Hawai'i Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with subdivision (b)(4) of this rule. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

In lieu of participating in the oral examination, parties served with notice of taking a deposition may transmit written questions in a sealed envelope on the party taking the deposition and that party shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Motion to terminate or limit examination. At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the circuit where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Submission to witness; changes; signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, within 30 days of its submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and retention by officer; exhibits; copies; filing and notice of filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of [here insert name of witness]". The officer shall retain the deposition and shall be responsible for its safekeeping until the officer files it pursuant to subdivision (f) (3) of this rule, or if it is not filed, until the final disposition of the case including any appeals; provided that an officer who has taken a deposition outside this state shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing; and further provided that if the officer discontinues the occupation of taking depositions by reason of death or otherwise, the officer or agent of the officer shall promptly file any depositions with the court.

Documents and things produced for inspection, during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if the person producing the materials affords to all parties fair opportunity to verify the copies by comparisons with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the officer or the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) A deposition shall be filed when submitted pursuant to this rule for use on a motion or at trial. For use on a motion, whether in support or opposition, a deposition may be filed concurrently with or after the filing of the motion. For use at trial,

a previously unfiled deposition offered in evidence shall not be filed more than five days before the the scheduled commencement of trial. In addition the court may at any time, on ex parte request or sua sponte, order the filing of a deposition.

When any party seeks to submit a deposition pursuant to this rule, the officer who took the deposition shall upon the party's request promptly file the deposition, or, if time permits, send it by registered or certified mail to the clerk of court for filing. The party who requested filing shall give prompt notice of the filing to all other parties.

(g) Failure to attend or to serve subpoena; expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by the other party and that party's attorney in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because that other party expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the amount of the reasonable expenses incurred by such other party and that party's attorney in attending, including reasonable attorney's fees.

COMMENTS:

Adopts HRCF Rule 30 with changes to gender neutral language and some alterations. The old language of Rule 30(a) was substituted for that of Rule 26(a) as it was decided that leave of court should still be necessary to take a deposition. On average, the dollar amounts in District Court are small and an unfair advantage could be taken by one side forcing another to concede by escalating legal costs and fees. Other minor changes were made to adapt to new procedures in the District Court or to make the section more understandable. Furthermore, an exception

of impending death of a witness was added as an exception not requiring leave of court and it was felt that a stipulation on the record to take a deposition was just as good as in writing.

Rule 31. DEPOSITIONS UPON WRITTEN QUESTIONS.

(a) Serving questions; notice. After commencement of an action, any party may take the testimony of any person, including a party, by deposition upon written questions. The attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes.

A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person who is to answer or the particular class or group to which the person belongs, and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation or a partnership or association or governmental agency in accordance with the provisions of Rule 30(b)(6).

Within 10 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 10 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 10 days after being served with redirect questions, a party may serve recross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(b) Officer to take responses and prepare record. A copy of the notice and copies of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and seal the deposition, attaching thereto the copy of the notice and the questions received by the officer.

(c) Retention; filing; notice of filing. Retention of the deposition by the officer, filing, and notice of filing shall be governed by the provisions of Rule 30(f).

COMMENTS:

Adopts HRCF Rule 31 with changes to gender neutral language. Section (d) has been deleted as its subject matter is dealt with in 26(c).

Rule 32. USE OF DEPOSITIONS IN COURT PROCEEDINGS.

(a) Use of depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Hawai'i Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (A) that the witness is dead; or (B) that the witness resides on an island other than that of the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the

deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offering party to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Hawai'i Rules of Evidence.

(b) Objections to admissibility. Subject to the provisions of Rule 28(b) and subdivision (d)(3) of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Reserved.

(d) Effect of errors and irregularities in depositions.

(1) AS TO NOTICE. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) AS TO DISQUALIFICATION OF OFFICER. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) AS TO TAKING OF DEPOSITION.

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition,

in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written interrogatories submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other interrogatories and within 3 days after service of the last interrogatories authorized.

(4) AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been ascertained.

(Amended effective December 6, 1996.)

COMMENTS:

Adopts HRCF Rule 32 with changes to gender neutral language.

Rule 33. QUESTIONS TO PARTIES.

(a) Availability; procedures for use. Any party may serve upon any other party written questions to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Questions may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after commencement of the summons and complaint upon that party. Questions must comply with Rule 30 of the Rules of the District Court of the State of Hawai'i.

Each question shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer, in conformity with Rule 30 of the Rules of the District Court. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the questions have been served shall serve a copy of the answers, and objections if any, within 10 days after the service of questions, except that a defendant may serve answers or objections within 15 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the questions may move for an order under Rule 37(a) with respect to any objection to or other failure to answer a question.

(b) Scope; use at trial. Questions may relate to any matters which can be inquired into under Rule 26(b), and the answers may be used to the extent permitted by the rules of evidence.

A question otherwise proper is not necessarily objectionable merely because an answer to the question involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such question need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time.

(c) Option to produce business records. Where the answer to a question may be derived or ascertained from the business records of the party upon whom the question has been served or from an examination, audit or inspection of such business records, including a compilation, abstract or

summary thereof and the burden of deriving or ascertaining the answer is substantially the same for the party serving the question as for the party served, it is a sufficient answer to such question to specify the records from which the answer may be derived or ascertained and to afford the party servicing the question reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries. A specification shall be in sufficient detail to permit the questioning party to locate and to identify, as readily as can the party served, the records from which the answer may be ascertained.

(Amended effective December 6, 1996.)

COMMENTS:

Adopts HRCF Rule 33 with a change in the deadline for answer and objection from 30 and 45 days to 10 and 15 days to conform to the shorter time periods in District Court. Also adds in a provision for providing business records and includes a cross-reference to the applicable District Court Rule.

Rule 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES.

(a) Scope. Any party may serve on any other party a request (1) to produce and permit the party making the request or someone acting on the requesting party's behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, computer/electronic recordings, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or

operation thereon, within the scope of Rule 26(b).

(b) Procedure. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 10 days after the service of the request, except that a defendant may serve a response within 15 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons not parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

(Amended effective December 6, 1996.)

COMMENTS:

Adopts HRCR Rule 34 with a change in the deadline for response from 30 and 45 days to 10 and 15 days to conform to the shorter time periods in District Court. Also includes a reference to include computer/electronic recording in subsection (a) as an update to current technology.

Rule 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS.

(a) Order for examination. In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may order that party to submit to a physical or mental examination by a physician. The order may be made only on motion for good cause shown and upon notice to the party to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of findings.

(1) If requested by a person against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to that requesting person a copy of a detailed written report of the examining physician setting out the physician's findings and conclusions. After such request and delivery the party causing the examination to be made shall be entitled upon request to receive from the party examined a like report of any examination, previously or thereafter made, of the same mental or physical condition. If the party examined refuses to deliver such report the court on motion and notice may make an order requiring delivery on such terms as are just, and if a physician fails or refuses to make such a report the court may exclude the physician's testimony if offered at the trial.

(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party examined may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine that party in respect of the same mental or physical condition. The deposition of the examining physician may be taken without leave of court, notwithstanding the provisions of Rule 26(a)(2).

COMMENTS:

Adopts HRCR Rule 35 with changes to gender neutral language.

Rule 36. REQUESTS FOR ADMISSIONS.

(a) **Request for admission.** A party may serve upon any other party a written request for the admission of the truth of any matters within the scope of Rule 26(b) set forth in the request that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of the documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each of the matters of which an admission is requested shall be stated separately and shall comply with Rule 30 of the District Court Rules of the State of Hawai'i. The matter is deemed admitted unless, within a period designated in the request, not less than 10 days after service thereof or within such shorter or longer time as the court may allow on motion and notice, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney. Such answer or objection shall comply with Rule 30 of the District Court Rules. Unless the court shortens the time, a defendant shall not be required to serve answers or objections before the expiration of 15 days after service of the summons and complaint upon that defendant. If an objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or state in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify that party's answer or deny only a part of the matter of which an admission is requested, the answering party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless that party states that the answering party has made reasonable inquiry and that the information known or readily obtainable by the answering party is insufficient to enable the party to admit or deny. Where the subject matter of the request for admissions is considered by the

answering party to present a genuine issue for trial, the answering party may not, on that ground alone, object to the request; the answering party may, subject to the provisions of Rule 37(c), deny the matter or state reasons why the answering party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is deemed admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(b) **Effect of admission.** Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by that party for any other purpose nor may be used against that party in any other proceeding.

COMMENTS:

Adopts HRCF Rule 36 with changes to gender neutral language. The 10 day minimum period for answer has been retained from the old DCRCP Rule 36(a), again in keeping with the shorter time limits in District Court. The intent of the changes in the grounds for denial and Rule 37 motions is to ensure that no motion need be made if the admissions were not answered at all or in a timely fashion. A cross-reference is added to the applicable Rule 30 of the District Court Rules.

Rule 37. FAILURE TO MAKE DISCOVERY: CONSEQUENCES.

(a) **Motion for order compelling discovery.** A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(1) **APPROPRIATE COURT.** An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a

deposition, to the district court in the circuit where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the district court in the circuit where the deposition is being taken.

(2) MOTION. If a deponent fails to answer a question propounded or submitted under Rules 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(6) or 31(a), or a party fails to answer a question submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before the proponent applies for an order.

If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26(c). If the court grants the motion with respect to questions, Rule 30 of the District Court Rules of the State of Hawai'i shall apply to the extent applicable.

(3) EVASIVE OR INCOMPLETE ANSWER. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) AWARD OF EXPENSES OF MOTION. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the advising attorney or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to comply with order.

(1) SANCTION BY DISTRICT COURT IN CIRCUIT WHERE DEPOSITION IS TAKEN. If a deponent fails to be sworn or to answer a question after being directed to do so by the district court in the circuit in which the deposition is being taken, the failure may be considered a contempt of that court.

(2) SANCTIONS BY DISTRICT COURT IN WHICH ACTION IS PENDING. If any party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as is just, and including the following:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring the party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that the party is unable to produce such person for examination.

(c) Expenses on failure to admit. If a party fails to admit the genuineness of any documents or the truth of any matter as requested under Rule 36,

and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the requesting party the reasonable expenses incurred in making that proof, including reasonable attorney's fees. The court shall make the order unless it finds that (1) an objection to the request was held to be justified pursuant to Rule 36(a), or (2) the admission sought was of no substantial importance, or (3) the answering party had reasonable ground to believe that the answering party might prevail on the matter, or (4) there was other good reason for the failure to admit.

(d) Failure of party to attend at own deposition or serve answers to questions or respond to request for inspection. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take that witness' deposition, after being served with a proper notice, or (2) to serve answers or objections to questions submitted under Rule 33, after proper service of the questions, or (3) to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraphs (A), (B), and (C) of subdivision (b)(2) of this rule. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in this subdivision may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by Rule 26(c).

(e) Expenses against the state. Except to the extent permitted by statute, expenses and fees may not be awarded against the State or a county under this rule.

(Amended effective December 6, 1996.)

COMMENTS:

Adopts HRCF Rule 37 with changes to gender neutral language and in appropriate places substitutes "district court" for "court." Adds a cross-reference to the applicable Rule 30 of the District Court Rules. Also, makes minor changes to the subsection (c) for clarification purposes.

ARTICLE VI. TRIALS

Rule 38. JURY TRIAL OF RIGHT.

(a) Right preserved. The right of trial by jury as declared by the Constitution of the State of Hawai'i or as provided by a statute shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the case is at issue. Such demand may be indorsed upon a pleading of a party and such demand must include the endorsement "Approved and So Ordered."

Upon such demand, the party demanding a trial by jury shall pay to the clerk of the district court such costs for trial by jury as are payable in the circuit court, and the case shall be transferred to the circuit court. The clerk shall prepare, certify and transmit all of the papers within 20 days after the filing of the demand.

(c) **Same: Specification of issues.** In the demand a party may specify the issues which he wishes tried by jury; otherwise the demanding party shall be deemed to have demanded trial by jury for all the issues so triable. If the party has demanded trial by jury for only some of the issues, any other party may demand trial by jury of other issues as provided by the rules of the circuit court.

(d) **Waiver.** The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by that party of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

COMMENTS:

Adopts old DCRCP Rule 38 with changes to gender neutral language. Also changes all the language to conform to "trial by jury" and incorporates a current administrative memo/order requiring a line for court approval.

Rule 39. RESERVED.

Rule 39.1. CONDUCT OF A TRIAL.

(a) Subject to the order of the court, the sequence of presentation of the case shall be as follows:

(1) The plaintiff shall have the right to make an opening statement. The defendant shall also have the right to make an opening statement, either immediately after the plaintiff's statement or at the beginning of the defendant's case.

(2) After the opening statement or statements the plaintiff shall produce the evidence on the plaintiff's part.

(3) The defendant may then open the defense and offer the defendant's evidence in support thereof.

(4) The parties may then respectively offer rebutting evidence only.

(5) When the evidence is concluded, unless the case is submitted on either side or both sides without argument, the plaintiff shall open the argument; the defendant may then reply; and the plaintiff may conclude the argument, and in the conclusion shall confine itself to answering any new matter or arguments presented by the defendant.

(b) **Except by leave of court:**

(1) Only one counsel for each party shall examine and cross-examine the same witness or be heard on any question.

(2) No more than two counsel shall appear for any party on the trial.

COMMENTS:

Adopts DCRCP Rule 39.1 with changes to gender neutral language. This rule has no parallel in the HRCF. But cf. RCCH 17. In light of the numbers of pro se parties in District Court, this committee felt it wise to retain this rule to provide some guidance to pro se parties.

Rule 40. RESERVED.

Rule 41. DISMISSAL OF ACTIONS.

(a) **Voluntary dismissal: Effect thereof.**

(1) BY PLAINTIFF; BY STIPULATION. An action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before the return date as provided in Rule 12(a) or service by the adverse party of an answer or of a motion for summary judgment, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States, or of any state, territory or insular possession of the United States an action based on or including the same claim.

(2) BY ORDER OF COURT. Except as provided in paragraph (1) of this subdivision of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon that defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) Involuntary dismissal: Effect thereof. For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. After the plaintiff has completed the presentation of the plaintiff's evidence, the defendant, without waiving the defendant's right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52(a). Unless the court in its order for dismissal otherwise specifies, the dismissal under this subdivision and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.

(c) Dismissal of counterclaim, cross-claim, or third-party claim. The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third party claim. A voluntary dismissal by the claimant alone pursuant to paragraph (1) of subdivision (a) of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of previously-dismissed action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

(Amended effective December 6, 1996.)

COMMENTS:

Adopts HRCPP Rule 41 with changes to gender neutral language and the elimination of one phrase in the second sentence of Rule 41(b) referring to trials without a jury.

Rule 42. CONSOLIDATION; SEPARATE TRIALS.

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate trials. The court in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or of any separate issue.

COMMENTS:

Not changed.

Rule 43. TAKING OF TESTIMONY.

(a) Form. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these the Hawai'i Rules of Evidence.

(b) Presentation of expert testimony. The court may schedule the presentation of all expert testimony during the same phase of the trial.

(c) Record of excluded evidence. If an objection to a question propounded to a witness is sustained by the court, the examining party may make a specific offer of what that party expects to prove by the answer of the witness. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it was offered, the objection made, and the ruling thereon. The court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(d) Affirmation in lieu of oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Interpreters. The court may appoint an interpreter of its own selection and may fix that interpreter's reasonable compensation. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs in the discretion of the court.

(Amended March 24, 2000, effective July 1, 2000).

COMMENTS:

HRCP Rule 43(a) adopted verbatim. The old DCRCP Rule 43(a) did not contemplate the Hawai'i Rules of Evidence which now control such matters.

DCRCP Rule 43(c) adopted instead of HRCP Rule 43(c) because there are no jury trials in District Court. DCRCP Rule 43(c) changed to gender neutral language. Also adds the word "party" to clarify a sentence.

DRCP Rules 43(d) & (e) not changed.

HRCP Rule 43(f) adopted with changes to gender neutral language.

Rule 44. RESERVED.

Rule 44.1. DETERMINATION OF FOREIGN LAW.

A party who intends to raise an issue concerning the law of a foreign country shall give notice in that party's pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Hawai'i Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.

COMMENTS:

Adopts HRCP Rule 44.1 with changes to gender neutral language. DCRCP Rule 44.1 was not changed to take into account the Hawai'i Rules of Evidence.

Rule 45. SUBPOENA.

(a) For attendance of witnesses; form; issuance. Every subpoena shall be issued by the clerk of the district court of the circuit in which the action is pending under the seal of the court, shall

state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) For production of documentary evidence.

A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service. A subpoena may be served at any place within the State. A subpoena may be served: (1) anywhere in the State by the sheriff or the sheriff's deputy or by any other person who is not a party and is not less than 18 years of age; or (2) in any county by the chief of police or the chief's duly authorized subordinate. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to such person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the State or a county, or an officer or agency of the State or a county, fees and mileage need not be tendered.

(d) Subpoena for taking depositions; place of examination.

(1) Proof of service of a notice to take a deposition as provided in Rules 30(b) and 31(a) constitutes a sufficient authorization for the issuance by the clerk of the district court in which the deposition is to be taken of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain evidence relating to any of the matters within the scope of the examination permitted by Rule 26(b), but in that

event the subpoena will be subject to the provisions of Rule 26(c) and subdivision (b) of this Rule 45.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A resident of the State may be required to attend an examination only in the county wherein the witness resides or is employed or transacts the witness' business in person, or at such other convenient place as is fixed by an order of court. A nonresident of the State subpoenaed within the State may be required to attend only in the county wherein the nonresident witness is served with a subpoena, or at such other convenient place as is fixed by an order of court.

(e) Reserved.

(f) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued.

(Amended effective December 6, 1996.)

COMMENTS:

Adopts HRCF Rule 45 with changes to gender neutral language. Subsection (c) changed pursuant to HRS Section 604-7 which allows service anywhere within the State and to allow for the implementation of licensed process servers as provided for by law.

Rule 46. EXCEPTIONS UNNECESSARY.

Formal exceptions to rulings or orders of court are unnecessary. It is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the party's

grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

COMMENTS:

Adopts HRCF Rule 46 with changes to gender neutral language.

Rule 47. RESERVED.

Rule 48. RESERVED.

Rule 49. RESERVED.

Rule 50. RESERVED.

Rule 51. RESERVED.

Rule 52. FINDINGS BY THE COURT.

(a) Effect. In all actions tried upon the facts, the court upon request of any party shall find the facts specially and state separately its conclusions of law thereon. Judgment shall be entered pursuant to Rule 58. Unless findings are requested, the court shall not be required to make findings of fact and conclusions of law. If an opinion or memorandum of decision is filed, stating the facts and the court's opinion on the law, it will be unnecessary to make other findings of fact and conclusions of law. Findings of fact and conclusions of law are unnecessary on decisions of motions except as provided in Rule 41(b).

(b) Motion, when to be made. Upon motion of a party made not later than 10 days after entry of judgment, or upon the hearing of a motion hereunder made by any party, the court may make findings, amend its findings, or make additional findings, and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made, the question of the sufficiency of the evidence to support the findings, or a question of incompleteness thereof or ambiguity or conflict therein, may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.

(c) When judgment is appealed. Whenever a notice of appeal is filed and findings of fact and conclusions of law have not been made, unless such findings and conclusions are unnecessary as provided by subdivision (a) of this rule, the court shall find the facts specially and state separately its conclusions of law thereon. Notwithstanding the filing of the notice of appeal, the court shall retain jurisdiction to make and file such findings and conclusions and to amend the judgment to conform thereto, if deemed necessary.

COMMENTS:

Adopts DCRCP Rule 52 without amendment. This committee believes that this matter should be left to the discretion of the Judge and the litigants. The much higher volume of civil cases in the District Court than the Circuit Courts, the much smaller jurisdictional amounts usually involved in civil actions in District Court, and the large

numbers of pro se litigants makes the adoption of HRCF Rule 52, the issuance of written findings of fact and conclusions of law in each and every trial, impractical in the run of the mill case. Nothing would preclude a District Judge from issuing written findings of fact and conclusions of law if that Judge deemed such action appropriate. With the exception of administrative revocation, the deleted line in (a) has no applicability to District Court because it is the appellate court standard of review.

Rule 53. RESERVED.**ARTICLE VII. JUDGMENT****Rule 54. JUDGMENTS; COSTS.**

(a) Definition; form. "Judgment" as used in these rules includes any order from which an appeal lies. A judgment shall not contain a recital of pleadings or the record of prior proceedings.

(b) Judgment upon multiple claims or involving multiple parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose

favor it is rendered is entitled, even if the party has not demanded such relief in the prevailing party's pleadings.

(d) Costs. Except when express provision therefor is made either in a statute or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the State or a county, or an officer or agency of the State or a county, shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on 48 hours' notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.

COMMENTS:

Adopts DCRCP Rule 54 with changes to gender neutral language. HRCF Rule 54 is slightly different in that it contemplates the use of masters. (See comment to Rule 53.)

Rule 55. DEFAULT.

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and the fact is made to appear by affidavit or otherwise, the clerk shall enter that party's default.

COMMENTS:

Adopts HRCF Rule 55(a) with changes to gender neutral language.

(b) Judgment. Judgment by default may be entered as follows:

(1) **BY THE CLERK.** When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon a verified complaint, subsequent verification, or affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if the defendant is not an infant or incompetent person.

COMMENTS:

Adopts HRCF Rule 55(b)(1) with changes to gender neutral language. While there is no real difference in the two different phrases used, HRCF Rule 55(b)(1) is adopted for consistency. In addition, a

verification is as effective as an affidavit to attain a judgment.

(2) **BY THE COURT.** In all other cases the party entitled to a judgment by default shall apply to the court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as it deems necessary and proper.

COMMENTS:

Not changed. In this particular instance, this committee has chosen to adopt DCRCP Rule 55(b)(2) instead of HRCF Rule 55(b)(2). This is contrary to the general philosophy of these revisions to bring uniformity to the two sets of rules of civil procedure. However, this committee notes that many more civil matters are defaults in District Court than in Circuit Court because of the lower jurisdictional amounts and the use of the District Court by businesses and collection agencies for collection matters. This committee has therefore concluded that the adoption of HRCF Rule 55(b)(2) into DCRCP Rule 55(b)(2) would entail considerably more paperwork for the District Court civil staff and would result in much more cost in the smaller amount cases.

(c) Setting aside default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

When a motion to set aside either an entry of default or a judgment by default is denied, the court in denying the motion may award to the non-defaulting party those reasonable attorney's fees incurred to defend the motion.

COMMENTS:

The committee would amend the rule to allow an award of reasonable attorney's fees to a party that successfully defends against a motion to set aside default and/or default judgment. This is to clarify the case law to

allow such award, and to make clear that such award is limited to those cases where the movant failed. The committee considers an award of attorney's fees particularly appropriate where the motion is defeated, considering the liberal standard that the law applies to setting aside such defaults.

(d) Claims. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a crossclaim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

COMMENTS:

Adopts HRCRCP Rule 55(d) with changes to gender neutral language. While there is no real difference in the two different phrases used, HRCRCP Rule 55(d) is adopted for consistency.

(e) Judgment against the state, etc. No judgment by default shall be entered against the State or a county, or an officer or agency of the State or a county, unless the claimant establishes the claimant's claim or right to relief by evidence satisfactory to the court.

COMMENTS:

No changes.

(f) Dismissal for want of prosecution in default cases. Dismissal for want of prosecution in default cases is governed by Rule 29 of the Rules of the District Court of the State of Hawai'i.

COMMENTS:

Adds new section (f) to include a cross-reference to the applicable District Court Rule.

Rule 56. SUMMARY JUDGMENT.

(a) For claimant. A party seeking to recover upon a claim, counterclaim, or a cross-claim may, at any time after the return day as provided in Rule 12(a) or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the

party's favor upon all or any part thereof.

(b) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and proceedings thereon. The motion shall be filed and served at least 10 days before the date fixed for the hearing. The adverse party may file and serve opposing memorandum and/or affidavits 72 hours before the time fixed for the hearing. The moving party may file and serve a reply 24 hours after the service of the opposition memorandum and/or affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits; further testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions or by

further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify that party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Form of order. Whenever the court on a motion for summary judgment, disposes of one or more but fewer than all claims, involving one or more parties, the order entered must specifically set forth the claim or claims disposed of, and with respect to each such claim, the party or parties in whose favor the disposition is made and the party or parties against whom the disposition is made.

(Amended July 29, 1997, effective September 1, 1997.)

COMMENTS:

Adopts HRCF Rule 56(a) (b) (c) (d) (e) (f) & (g) with changes to gender neutral language. Adopts HRCF Rule 56(h) which has no counterpart in DCRCP Rule 56. With advent of more complex litigation in District Court, particularly the commercial summary possession cases, HRCF Rule 56(h) may be needed.

Rule 57. RESERVED.

Rule 58. ENTRY OF JUDGMENT.

When the court directs entry of judgment in any case, the court shall order the prevailing party or the clerk to prepare such judgment of the court. When the clerk is ordered to prepare the judgment the clerk shall sign and enter it forthwith, unless directed by the court to submit the form of the judgment for the court's approval. The filing of the judgment in the office of the clerk constitutes the entry of the judgment; and the judgment is not effective before such entry. The entry of the judgment shall not be delayed for the taxing of costs.

COMMENTS:

Adopts DCRCP Rule 58 with changes to gender neutral language. HRCF Rule 58 is not adopted here because it contemplates jury verdicts which do not occur in District Court.

Rule 59. NEW TRIAL; AMENDMENT OF JUDGMENTS.

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for any legal cause. On a motion for a new trial, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) Time for serving affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On initiative of court.

(1) Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party.

(2) After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial which was timely served, for a reason not stated in the motion.

(3) In either case, the court shall specify in the order the grounds therefor.

(e) Motion to alter or amend a judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of judgment.

COMMENTS:

Not changed. HRCF Rule 59 is not adopted here because it contemplates a jury trial.

Rule 60. RELIEF FROM JUDGMENT OR ORDER.

(a) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the supreme court, and thereafter while the appeal is pending may be so corrected with leave of the supreme court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have

prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court of competent jurisdiction to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

COMMENTS:

Adopts DCRCP Rule 60 (HRCF Rule 60 is identical) with changes to gender neutral language.

Rule 61. HARMLESS ERROR.

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

COMMENTS:

No changed. HRCF Rule 61 is identical.

Rule 62. STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT.

Except as otherwise provided by statute or rule of court:

(a) Automatic stay. No execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. However, unless otherwise ordered by the court, the issuance and execution of a writ of possession shall not be stayed during the 10-day period after entry of a judgment for possession unless a stay is obtained under subdivision (i). In cases governed by the 10-day provision the court, upon good cause shown, may allow execution to issue or other appropriate action to be taken for the enforcement of the judgment within the 10-day period unless, within such time as shall be allowed by the court, a stay is obtained under subdivision (b) or (d).

(b) Stay on motion for new trial or other motion. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for the making of or amendment to the findings or for additional findings made pursuant to Rule 52(b), or when justice so requires in other cases until such time as the court may fix.

(c) Reserved.

(d) Stay upon appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in favor of the state, etc. When an appeal is taken by or at the direction of the State or a county, or by an officer or agency of the State or a county, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Reserved.

(g) Power of supreme court and intermediate court of appeals not limited. The provisions in this

rule do not limit any power of the supreme court or of the intermediate court of appeals or of a justice or judge thereof to stay proceedings during the pendency of an appeal or to grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of judgment upon multiple claims. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(i) Landlord and tenant proceedings. Nothing in this rule shall be deemed to supersede the provisions of section 666-14 of the Hawai'i Revised Statutes for the obtaining of a stay prior to issuance of a writ of possession.

COMMENTS:

Not changed. DCRCP Rule 62 has been retained here. HRCPP Rule 62 took into consideration injunctions, receiverships and accountings which are not within the jurisdiction of the District Court. Also, HRCPP Rule 62 fails to take into account the summary possession actions over which the District Court has exclusive jurisdiction.

Rule 63. DISABILITY OF JUDGE.

If by reason of death, sickness, or other disability, or absence from the State, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules, then any other judge regularly sitting in or assigned to the court in which the action was tried may perform those duties; but if the substitute judge cannot perform those duties because that judge did not preside at the trial or for any other reason, the substitute judge has the discretion to grant a new trial.

(Amended effective December 6, 1996.)

COMMENTS:

Retains DCRCP Rule 62 (HRCPP Rule 62 is identical) with changes to gender neutral

language and clarifies language in the case of a substitute judge.

**ARTICLE VIII.
PROVISIONAL AND FINAL REMEDIES
AND SPECIAL PROCEEDINGS**

Rule 64. SEIZURE OF PERSON OR PROPERTY.

At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by the law of the State. The remedies thus available include arrest, attachment, garnishment, replevin, sequestration, and other corresponding or equivalent remedies however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action.

COMMENTS:

Adopts HRCR Rule 64 verbatim. HRCR Rule 64 adds the second sentence to this rule. This committee can see no reason why this second sentence would not apply equally to District Court cases as Circuit Court cases.

Rule 65. RESERVED.

Rule 65.1. SECURITY: PROCEEDINGS AGAINST SURETIES.

Whenever these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits itself to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

COMMENTS:

Adopts HRCR Rule 65.1 with changes to gender neutral language.

Rule 66. RESERVED.

Rule 67. DEPOSIT IN COURT.

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited and withdrawn in accordance with orders of the court.

COMMENTS:

Not changed.

Rule 68. OFFER OF SETTLEMENT OR JUDGMENT.

At any time more than 10 days before the trial begins, any party may serve upon any adverse party an offer of settlement or an offer to allow judgment to be taken against either party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall, in accordance with the agreement, enter an order of dismissal or a judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, either party may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearing to determine the amount

or extent of liability.

(Amended May 25, 1999, effective July 1, 1999.)

Rule 69. EXECUTION.

Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in the manner provided by the law of the State. In aid of the judgment or execution, the judgment creditor or the judgment creditor's successor in interest when that interest appears of record, may examine or obtain written discovery from any person, including the judgment debtor, in the manner provided in these rules and Rule 30 of the Rules of the District Court of the State of Hawai'i, provided, however, questions and depositions upon written questions shall not exceed 45 questions in number including sub-parts.

When failure of any person to appear for examination results in the oral issuance of a bench warrant, the judgment creditor or judgment creditor's attorney must file the bench warrant within ten (10) days of the court's issuance. Leave of court is required to file a bench warrant outside the time limit set forth in this rule.

COMMENTS:

Adopts DCRCP Rule 69 (HRCF Rule 69 is identical) with changes to gender neutral language. The new rule adds the possibility of written discovery with a limit to deter any abuses and adds a cross-reference to the corresponding Rule 30 of the District Court Rules. The last paragraph incorporates current practice based upon a 5/5/77 administrative memo and is consistent with Rule 23 of the Circuit Court Rules. Any bench warrant must be timely filed (10 days) or it will be rejected.

(Amended effective December 6, 1996.)

Rule 70. GARNISHMENT.

(a) Nonconclusory affidavit and service of TANF notice on individuals.

(1) Any motion for issuance of garnishee summons for funds of an individual held by a financial institution must be accompanied by a

separate affidavit or declaration of the movant/judgment creditor or movant/judgment creditor's attorney setting forth those facts which lead the affiant or declarant to conclude that the assets to be garnished are not traceable to Temporary Aid to Needy Families - Federal and State (TANF), formerly known as Aid to Families with Dependent Children (AFDC) grants, or to funds that are non-garnishable under the law. The sufficiency of each nonconclusory affidavit or declaration in support of the motion for issuance of garnishee summons for funds shall be reviewed by the presiding judge prior to issuance of the garnishee summons.

(2) After issuance of the garnishee summons and before issuance of the garnishment order, a TANF Notice must be served upon the individual/judgment debtor. Service shall be by personal service or by certified or express mail. If service of the notice cannot be effected by any of the aforesaid methods, service may be effected by publication pursuant to Section 634-36 of the Hawai'i Revised Statutes, as the same may be renumbered. The judgment creditor shall file a declaration with the court regarding the service attempts and the result. If service was obtained, a copy of the TANF Notice together with proof of service thereof shall be filed with the court immediately after such notice has been served upon the individual/judgment debtor. A garnishee order may issue after proof of service has been made, or after the judgment creditor has filed a return of service, or an affidavit or declaration with the court describing the service and the result.

(b) Where judgment/prejudgment debtor not an individual. Where the judgment debtor or prejudgment debtor is other than an individual such as a corporation, partnership or trustee, or where an individual's funds other than those held by a financial institution are being garnished, subsection (a) of this rule is not applicable.

(c) Time of motion. In all post-judgment garnishment proceedings, unless ordered by the court, any motion for issuance of garnishee summons shall not be filed until ten days have elapsed since entry of judgment.

(d) Garnishment of wages. Whenever a judgment creditor seeks to garnish a judgment debtor's wages pursuant to Chapter 652 or Chapter 653 of the Hawai'i Revised Statutes:

(1) The judgment creditor must serve upon the judgment debtor's employer, in accordance with the procedures set forth in Chapter 652 or 653 of the Hawai'i Revised Statutes, two copies of either (i) the motion for issuance of garnishee summons or (ii) certified copy of the judgment and the affidavit or declaration as to the amount due and unpaid on account of the judgment, whichever is applicable, which includes a separate Garnishee Information form, in substantially the same form as set forth in Form 27 in the Appendix of Forms herein.

(2) The creditor must attach a separate Notice to the Employer, in substantially the same form as set forth in Form 27A in the Appendix of Forms herein, as the first page of each copy of the documents set forth in paragraph (d)(1) of this rule.

(e) Motion for return/release of garnished wages. If a judgment debtor files a motion for return and/or release of garnished wages pursuant to Chapter 652 or 653 of the Hawai'i Revised Statutes, notice of the motion must be provided to both the judgment creditor and the judgment debtor's employer. The judgment debtor may use Form 27B in the Appendix of Forms herein, Defendant's Motion for Return/Release of Wages Exempt From Garnishment.

COMMENTS:

Incorporates practice requirements of federal case law regarding AFDC notices and other exempt funds. Incorporates administrative memos/orders and the time period for motions to amend judgments of Rule 59(e).

(Amended May 15, 1998, effective June 15, 1998; further amended August 27, 2004, effective January 1, 2005.)

Rule 71. RESERVED.

ARTICLE IX. JUDICIAL REVIEW

Rule 72. JUDICIAL REVIEW TO A DISTRICT COURT.

(a) How taken. Where a right of redetermination or review in a district court is allowed by statute, any person adversely affected by the decision, order or action of a governmental

official or body other than a court, may appeal from such decision, order or action by filing a petition for judicial review in the district court having jurisdiction of the matter. As used in this rule, the term "petitioner" means any person or persons filing a petition for judicial review, and "respondent" means every governmental body or official (other than a court) whose decision, order or action is appealed from, and every other party to the proceedings.

(b) Time. The petition for judicial review shall be filed in the district court within 30 days after the mailing of the decision or order or mailing of notification of the action taken, in the manner provided by statute. The petition shall include a statement of the case and prayer for relief as provided in Rule 72(e).

(c) Service. Promptly after filing the petition for judicial review, the petitioner shall serve a certified copy thereof upon each respondent.

(d) Record on appeal.

(1) **DESIGNATION.** The petitioner shall, within the time provided for filing the petition for judicial review, or within such further time as may be allowed by the court for good cause shown, prepare and present to the clerk of the district court a designation, which shall specify the papers, transcripts, minutes and exhibits which the petitioner desires filed in the district court in connection with the petition. The clerk, in the name and under the seal of the district court, shall endorse on the designation an order, directed to the official or body whose decision, order or action is appealed from, commanding the latter to certify and transmit such papers, transcripts, minutes and exhibits to the district court within 15 days of the date of the order or within such further time as may be allowed by the court. The clerk shall issue certified copies of such designation and order to the petitioner for service upon the official or body whose decision, order or action is appealed from and for service upon any other respondent. The petitioner shall serve certified copies of the designation and order and shall make due return of service thereof to the clerk of the district court. The district court may compel obedience to the order by any appropriate process.

(2) **COUNTER DESIGNATION.** Any resident may, within 10 days after service of the designation and statement of the case, prepare and present to the clerk

of the district court a counter designation, which shall specify additional papers, transcripts, minutes and exhibits which the respondent desires to be filed in the district court. The clerk shall endorse thereon an order, as in the case of a designation, and shall issue the order and counter designation to the respondent for service and return as provided in Rule 72(d)(1) in the case of a designation and order. The district court may compel obedience to the order by any appropriate process. When the respondent desiring such additional papers, transcripts, minutes and exhibits has official custody of the same, it shall be sufficient that the respondent file the same and identify the same in an accompanying certificate. A copy of such certificate and of any counter designation shall be served forthwith upon the petitioner.

(e) Statement of case. The petition for judicial review shall include a short and plain statement of the case that shall state with specificity the grounds upon which the petitioner seeks reversal of the administrative decision, and a prayer for relief.

(f) Costs. No appeal shall be heard, and the petition shall be dismissed, unless the petitioner shall pay all costs, if any, and furnish every bond or other security, if any, required by law.

(g) Stay. The filing of a petition for judicial review shall not operate as a stay of the decision, order or action from which the appeal was taken.

(h) Hearing. The district court shall schedule the hearing on the petition as quickly as practicable, and the review shall be on the record of the administrative hearing without taking additional testimony or evidence. If the petitioner fails to appear without just cause, the court shall find for the respondent. The sole issues before the court shall be whether the governmental official or body exceeded constitutional or statutory authority, erroneously interpreted the law, acted in an arbitrary or capricious manner, committed an abuse of discretion, or made a determination that was unsupported by the evidence in the record.

(i) Judgment. Upon determination of the petition, the court having jurisdiction shall enter judgment to reverse or affirm the administrative ruling. Such judgment shall be reviewable, or final, as may be provided by law. Promptly after final determination of the petition for judicial review in the district court, the clerk of the court shall notify all

parties concerned, of the disposition of the appeal.

COMMENTS:

Adopts DCRCP Rule 72 with modifications.

Rule 73. to 76. DELETED.

**ARTICLE X. DISTRICT COURTS
AND CLERKS**

Rule 77. DISTRICT COURTS AND CLERKS.

(a) District courts always open. The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making motions and orders. The office of the clerk with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the court may provide by rule that the office of the clerk shall be open for specified hours on Saturday, Sundays or legal holidays.

(b) Trials and hearings; orders in chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials.

(c) Clerk's office and orders by clerk. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and legal holidays. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

(d) Notice of orders or judgments. Immediately upon entry of a judgment, or an order for which notice of entry is required by these rules, the clerk shall serve a notice of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to appear, and such other person as the court may direct, and shall make a note in the docket of the mailing. Such mailing is

sufficient notice for all purposes for which notice of the entry of a judgment or order is required by these rules. In addition, immediately upon entry, the party presenting the judgment or order shall serve a copy thereof in the manner provided in Rule 5. Lack of notice of the entry by the clerk, or failure to make such service, does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted by Rule 4(a) of the Hawai'i Rules of Appellate Procedure.

(e) Costs and fees to be collected by the clerk.

The clerk shall collect costs and fees provided by Chapter 607 of the Hawai'i Revised Statutes except that the clerk shall collect the amounts specified herein as follows:

1. For copies of any document in any public record:
 - a. maintained by the clerk and stored in the clerk's office:
 - \$1.00 for the first page
 - \$.50 for each additional page
 - b. in off-site storage:
 - Usual copying charge plus \$5.00
 - c. on microfilm:
 - i. by clerk:
 - \$1.00 per page plus \$5.00
 - ii. self-service:
 - \$1.00 per page
 - d. to be telefaxed:
 - Usual copying charge plus:
 - i. within Hawai'i:
 - \$2.00 first page
 - \$1.00 each additional page
 - ii. outside Hawai'i, within the United States:
 - \$5.00 first page
 - \$2.00 each additional page
 - iii. outside the United States:
 - \$10.00 first page
 - \$5.00 each additional page
 - iv. rush requests (copy provided within 4 hours if request received before noon):
 - \$10.00 plus all other applicable charges.
 - e. audio tapes, computer diskettes (per hearing or document in the court's format, if available and court or clerical staff can make the copy):
 - \$10.00
 - f. video tape:
 - cost of production

2. Parties to a pending case shall not be charged for a paper copy of the court order, opinion, judgment or any other item entered in the case by the court.

3. The clerk shall charge the actual cost of mailing copies of any document, provided that parties to a pending case shall not be charged for the mailing of a paper copy of a court order, opinion, or other item entered in the case by the court.

4. Ex officio filing (in addition to the usual filing fee):

\$10.00

5. The court may waive costs and fees for good cause shown. In lieu of copying and mailing fees, the administrative judge may authorize the clerk to provide copies of orders, opinions, or other items to publishing companies in exchange for published materials for the benefit of the court or the judiciary.

(f) Costs awarded by the court. In addition to any other costs allowed by statute or rule, the court may award to a prevailing plaintiff, cross-claimant, or third-party plaintiff the actual cost of service of process, whether service is made by a public or private process server, provided the amount shall not exceed the statutory amount(s) allowed for service of process by sheriffs or police officers.

COMMENTS:

Adopts DCRCP Rule 77 (HRCF Rule 77 is identical except it refers to "Circuit" rather than "District" Court) with changes to gender neutral language and addition of paragraph (e) which is applicable to the District Court.
(Amended April 25, 2003, effective July 1, 2003.)

Rule 78. MOTION DAY.

Unless local conditions make it impracticable, each district court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as the judge considers reasonable may make orders for the advancement, conduct, and hearing of actions.

To expedite its business, the court may make provisions by rule or order for the submission and determination of motions without oral hearing upon

brief written statements of reasons in support and opposition.

COMMENTS:

Adopts DCRCP Rule 78 (HRCF Rule 78 is identical) with changes to gender neutral language.

Rule 79. BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN.

(a) Civil docket. The clerk shall keep a record known as "civil docket" and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the page of the docket whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, and judgments shall be noted chronologically in the civil docket on the page assigned to the action and shall be marked with its file number. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. When in an action trial by jury has been properly demanded or ordered, the clerk shall enter the word "jury" on the page assigned to that action and the date of transfer of the case to the circuit court.

(b) Civil judgments and orders. The clerk shall keep, in such form and manner as the supreme court may prescribe, a correct copy of every final judgment and any other order which the court may direct to be kept.

(c) Indices. Suitable indices of the civil docket shall be kept by the clerk under the direction of the court.

(d) Other books and records of the clerk. The clerk shall also keep such other books and records as may be required from time to time by the supreme court.

COMMENTS:

Retains DCRCP Rule 79(a) (b) (c) & (d) verbatim. HRCF Rule 79(a) (b) (c) & (d) is identical to the DCRCP except that DCRCP

Rule 79(a) has an addition phrase at the end of the last sentence to account for the transfer of cases to Circuit Court.

Eliminates DCRCP Rule 79(e). This committee believes that a rule of civil procedure dictating a retention schedule for hard copy documents greatly restricts the Judiciary's ability to cope with limited storage resources and limits the Judiciary's ability to utilize new technology in document storage and retrieval. This committee believes that such retention schedule matters are better left to local rules and to the Supreme Court under Rule 79(d).

Rule 80. STENOGRAPHIC REPORT OR TRANSCRIPT AS EVIDENCE.

(a) Reserved.

(b) Reserved.

(c) Stenographic report or transcript as evidence. Whenever the testimony of a witness at a trial or hearing which was stenographically reported, or preserved on tape or on such other mechanical device as may be appropriate, is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony or, if the transcript was not prepared by an official reporter, by the clerk of the court.

COMMENTS:

Retains DCRCP Rule 80(c) which differs from HRCF Rule 80(c) in with the addition of the last phrase concerning the clerk of court this language is necessary because the District Courts often utilize court clerks to record testimony.

ARTICLE XI. GENERAL PROVISIONS

Rule 81. APPLICABILITY.**(a) To what proceedings not applicable.**

Except as expressly otherwise provided by statute or rule of court, these rules shall not apply to:

(1) The small claims division of the district courts;

(2) Proceedings for the forfeiture of bonds under section 804-51 of the Hawai'i Revised Statutes, as the same may be renumbered.

(3) Judicial review pursuant to Rule 72.

(4) Actions for relief from harassment maintained pursuant to HRS Section 604-10.5, as the same may be renumbered.

In small claims actions, the Rules of the Small Claims Division of the District Courts shall apply. In other proceedings not governed by District Court Rules of Civil Procedure, Rule 31 of the Rules of District Courts of the State of Hawai'i shall apply.

(b) Other statutory proceedings. These rules shall apply to the following proceedings except insofar as and to the extent that they are inconsistent with specific statutes of the State or rules of court relating to such proceedings:

(1) Proceedings for the forfeiture of property for violation of a statute;

(2) Proceedings for enforcement of an order, subpoena, or other power of an administrative agency;

(3) Proceedings under part III of chapter 142, Hawai'i Revised Statutes;

(4) Actions for the collection of taxes;

(5) Any proceeding to which the Uniform Commercial Code, chapter 490 of the Hawai'i Revised Statutes, applies.

(c) Reserved.

(c.1) Place of filing small claims. Rule 3(c) shall govern the place of filing of statements of claim in the small claims divisions of the district courts.

(d) Reserved.**(e) Reserved.****(f) Reserved.****(g) Reserved.****(h) Reserved.**

(i) Applicability in general. Except as otherwise provided in this Rule 81, these rules shall apply to all actions and proceedings of a civil nature in any district court.

(j) References to incompetent person. Under any rule in which reference is made to an incompetent person the term "incompetent person" includes any person, other than an infant, for whom a guardian may be appointed pursuant to statute.

COMMENTS:

Adopts DCRCP Rule 81.

Adds to DCRCP Rule 81(a) subdivisions (3) & (4) which generally exempts Rule 72 Administrative Appeals and HRS § 604-10.5 temporary restraining orders against harassment situations from the full application of these procedures. Rule 72 appeals should be exempt since Rule 72 does not contemplate an evidentiary hearing. HRS § 604-10.5 hearings should be exempt from the full application of these procedures because these are summary proceedings almost always involving only parties appearing pro se. The application of discovery and formal pleading requirements to these proceedings would defeat the legislative intent to defuse these dangerous situations. The statutory reference in 81(a)(2) has been updated and a cross-reference has been added to District Court Rules where applicable.

Rule 82. JURISDICTION AND VENUE UNAFFECTED.

These rules shall not be construed to extend or limit the jurisdiction of the district courts or the venue of actions therein.

COMMENTS:

Adopts DCRCP Rule 82 (HRCPP Rule 82 is identical except to refer to "District" rather than "Circuit Court) verbatim language.

Rule 83. RULES BY DISTRICT COURTS.

Each district court by action of a majority of the judges thereof, or by the judge thereof if there be only one, may from time to time, with the approval of the supreme court, make and amend rules governing its practice not inconsistent with these rules. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.

COMMENTS:

Adopts DCRCP Rule 83 (HRCR Rule 83 is identical except to refer to "District" rather than "Circuit" Court) verbatim language.

Rule 84. FORMS.

The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

COMMENTS:

Adopts DCRCP verbatim to encourage use of District Court forms.

Rule 85. TITLE.

These rules may be known and cited as District Court Rules of Civil Procedure.

COMMENTS:

Not changed.

SCHEDULE A

DISTRICT COURT DIVISIONS UNDER RULE 18

Column 1 of this schedule sets out the division designation within the judicial circuit, Column 2 sets out the division boundaries, and Column 3 sets out the location of the courthouse for the division. Whenever in Column 2 land areas are referred to by name, the same refers to the districts into which the State is divided by and the respective boundaries thereof as set forth in section 4-1 of the Hawaii Revised Statutes, as amended.

Column 1

Column 2

Column 3

THE DISTRICT COURT OF THE FIRST CIRCUIT

Honolulu Division	Honolulu	Honolulu
'Ewa Division	'Ewa	Pearl City
Wai'anae Division	Wai'anae	Wai'anae
Waialua Division	Waialua	Wahiawa
Wahiawa Division	Wahiawa	Wahiawa
Ko'olaupoko* Division	Ko'olaupoko	Kane'ohe
Ko'olaupoko* Division	Ko'olaupoko	Kane'ohe

* This rule uses file spelling found in Hawaii Revised Statutes §§ 4-1 (Supp. 1992). The book *Place Names of Hawaii* by Pukui, Elbert and Mookini (University of Hawaii Press, 1974) spells the names as two words: Ko'olau Loa and Ko'olau Poko.

THE DISTRICT COURT OF THE SECOND CIRCUIT

Wailuku Division	Wailuku and Makawao	Wailuku
Hana Division	Hana	Hana
Lahaina Division	Lahaina	Lahaina
Moloka'i Division	Moloka'i	Kaunakakai
Lana'i Division	Lana'i	Lana'i City

THE DISTRICT COURT OF THE THIRD CIRCUIT

Puna Division	Puna	Kea'au
North & South Hilo Division	North & South Hilo	Hilo
Hamakua Division	Hamakua	Honoka'a
North Kohala Division	North Kohala	Kapa'au
South Kohala Division	South Kohala	Kamuela
North & South Kona Division	North & South Kona	Kealahkekua
Ka'u Division	Ka'u	Na'alehu

THE DISTRICT COURT OF THE FIFTH CIRCUIT

Lihu'e Division	Lihu'e and Kawaihau	Lihu'e
Koloa Division	Koloa	Koloa
Waimea Division	Waimea	Waimea
Hanalei Division	Hanalei	Hanalei

(Amended October 15, 1980, effective November 15, 1980; further amended July 12, 1983, effective September 6, 1983; further amended March 25, 1992, effective March 25, 1992; further amended June 1, 1993, effective June 1, 1993; further amended June 23, 1994, effective June 23, 1994; further amended February 8, 1996; effective April 1, 1996.)

APPENDIX OF FORMS

DISTRICT COURT CIVIL FORMS

Form #	Short Name	Title of Document
1DC01.	AFDC Notice	Notice to Recipients of Aid to Families With Dependent Children (AFDC); Notice of Funds Exempt From Garnishment Under Law
1DC02.	Affidavit Re: Attorney's Fees	Affidavit of Counsel Re: Attorney's Fees and Costs; Appendix
1DC03.	Bench Warrant	Bench Warrant
1DC04.	Certificate of Service	Certificate of Service
1DC05.	Civil Information Sheet	District Court Civil Information Sheet
1DC06.	Claims/Party(ies) Information Sheet	District Court Additional Claim(s)/Party(ies) Information Sheet
1DC07.	Complaint (Assumpsit)	Complaint (Assumpsit-Money Owed); Declaration; Exhibit(s); Summons
1DC08.	Complaint (Assumpsit & Summary Possession)	Complaint (Assumpsit, Summary Possession/Landlord-Tenant, Damages); Declaration; Exhibit(s); Summons
1DC09.	Complaint (Personal Injury)	Complaint (Personal Injury/Property Damages); Summons
1DC10.	Complaint (Replevin)	Complaint (Replevin); Summons
1DC11.	Continuance (Non-hearing Motion)	Non-Hearing Motion for Continuance; Declaration Notice of Motion; Certificate of Service
1DC12.	Continuance (Stipulation)	Stipulation for Continuance
1DC13.	Cost Relief From Filing Fees	Ex Parte Application for Relief From Cost; Declaration; Order
1DC14.	Counterclaim	Counterclaim; Certificate of Service; Declaration
1DC15.	Entry of Default (Default)	Entry of Default

Form #	Short Name	Title of Document
1DC16.	Request for Entry of Default Judgment (Default)	Ex Parte Request for Default Judgment; Default Judgment by Clerk
1DC17.	Motion for Default Judgment (Default)	Ex Parte Motion for Default Judgment; Declaration; Exhibit(s) 1 through ____; Affidavit of Counsel Re: Attorney's Fees; Order Granting Ex Parte Motion for Default Judgment
1DC18.	Motion for Default Judgment (Non-hearing) (Default)	Non-Hearing Motion for Default Judgment; Declaration; Exhibit(s) 1 through ____; Affidavit of Counsel Re: Attorney's Fees; Notice of Motion; Certificate of Service; Order
1DC19.	Discontinuance of OE	Ex Parte Motion for Discontinuance of Order for Examination and [] Recall of Bench Warrant; Order; Certificate of Service
1DC20.	Dismissal	Notice of Dismissal
1DC21.	Dismissal (by Stipulation)	Stipulation for Dismissal
1DC22.	Exemplification	Exemplification
1DC23.	Exhibit List	Exhibit List
1DC24.	Exhibit List--Continuation Sheet	Exhibit List Continuation Sheet
1DC25.	Garnishee by Affidavit	Affidavit of Judgment Creditor(s) for Garnishment of Wages; Exhibit(s); Notice to Employer of Judgment Debtor; Garnishee Information
1DC26.	Garnishee Disclosure	Garnishee Disclosure [] Funds [] Wages
1DC27.	Garnishee Information Re: Affidavit	Garnishee Information Re: Affidavit of Judgment Creditor(s) for Garnishment of Wages
1DC27A.	Garnishee Notice	Notice to the Employer/Garnishee
1DC27B.	Defendant's Motion for Return	Defendant's Motion for Return/Release of Wages Exempt from Garnishment; Notice of Motion; Certificate of Service; Garnishment Calculation Worksheet; Exhibit "A"
1DC28.	Garnishee Information Re: Garnishee Summons	Garnishee Information Re: Garnishee Summons

Form #	Short Name	Title of Document
1DC29.	Garnishee by MIGS	Ex Parte Motion for Issuance of Garnishee Summons After Judgment; Declaration; Non-Conclusory Declaration; Order; Exhibit(s); Garnishee Summons; Garnishee Information; Garnishee Disclosure
1DC30.	Garnishee Order	Garnishee Order
1DC31.	Garnishee OSC	Motion for Order to Show Cause on Garnishee; Declaration and Order
1DC32.	Garnishee Summons	Garnishee Summons; Declaration and Order
1DC33.	Garnishee Transfer	Affidavit of Garnishee Transfer; Exhibit(s); Notice to Employer of Judgment Debtor(s)
1DC34.	Judgment	Judgment
1DC35.	Judgment for Possession	Judgment for Possession
1DC36.	Motion To Dismiss	Motion to Dismiss; Declaration; Notice of Motion; Certificate of Service
1DC37.	Motion Re Discovery	Motion Re Discovery; Declaration; Notice of Motion; Certificate of Service
1DC38.	Motion (Hearing) [] To [] For _____;	[] Plaintiff(s)' [] Defendant(s)' Motion [] To [] For _____; Declaration, Notice of Motion; Certificate of Service
1DC39.	Motion (Non-Hearing) [] To [] For _____;	[] Plaintiff(s)' [] Defendant(s)' Non-Hearing Motion [] To [] For _____; Declaration; Notice of Motion; Certificate of Service
1DC40.	Motion for Service by Posting	Ex Parte Motion for Service of Process By Posting and By Certified Mail; Declaration; Declaration of Process Server; Order Directing Service of Process and Appearance of Defendant(s) (For Summary Possession Complaints Only)
1DC41.	Motion for Reconsideration or New Trial	Motion for Reconsideration, or New Trial; Declaration; Notice of Motion; Certificate of Service
1DC42.	Motion to Set Aside [] Default [] Judgment or []	Dismissal Motion to Set [] Default [] Judgment or [] Dismissal; Declaration; Notice of Motion; Certificate of Service
1DC43.	Notice of Entry of Judgment	Notice of Entry of Judgment or Order

Form #	Short Name	Title of Document
1DC44.	Order for Exam Individual and Person with Knowledge	Ex Parte Motion for Examination of <input type="checkbox"/> Judgment Debtor(s) or <input type="checkbox"/> Person Having Knowledge of Judgment Debtor(s); Declaration; Order for Examination; Exhibit(s)
1DC45.	Release of Garnishee	Release of Garnishee; Certificate of Service
1DC46.	Return of Exhibits	Request for Return of Exhibits
1DC47.	Return of Service	Return of Service; Acknowledgment of Service
1DC48.	Satisfaction of Judgment	<input type="checkbox"/> Satisfaction of Judgment <input type="checkbox"/> Release of Garnishee
1DC49.	Subpoena/Duces Tecum	<input type="checkbox"/> Subpoena or <input type="checkbox"/> Subpoena Duces Tecum; Exhibit A
1DC50.	Summons	Summons
1DC51.	Petition for TRO (TRO)	Petition for Ex Parte Temporary Restraining Order and for Injunction Against Harassment; Declaration of Petitioner; Temporary Restraining Order Against Harassment; and Notice of Hearing
1DC52.	Order Granting Injunction Against Harassment (TRO)	Order Granting Petition for Injunction Against Harassment
1DC53.	Writ of Execution	Writ of Execution; Exhibit A (Hawai'i Revised Statutes 651-32)
1DC54.	Writ of Possession	Writ of Possession
1DC55.	Writ of Replevin	Writ of Replevin